

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CLIFFORD F. TUTTLE, JR., AS  
REPRESENTATIVE OF THE ESTATE OF  
DENNIS W. TUTTLE, DECEASED,  
ROBERT TUTTLE, AND RYAN TUTTLE,

*Plaintiffs,*

VS.

CITY OF HOUSTON, *et al.*

*Defendants.*

CIVIL ACTION NO. 4:21-cv-00270

SEALED

CONSOLIDATED WITH

JOHN NICHOLAS, as temporary administrator of the Estate of Rhogena Nicholas and JO ANN NICHOLAS, individually and as an heir of the Estate of Rhogena Nicholas,

*Plaintiffs,*

VS.

CITY OF HOUSTON, *et al.*

*Defendants.*

**DEFENDANT GERALD GOINES'**  
**MOTION TO ADOPT JURY CHARGE FILED BY CITY OF HOUSTON AND**  
**SUPPLEMENTAL INSTRUCTIONS**

To the Honorable United States District Judge Alfred H. Bennett:

Defendant Gerald Goines moves to adopt the Jury Charge filed by the City of Houston (Dkt. 382) and submits the following additional proposed instructions for the Court's consideration.

Respectfully submitted,

DWAYNE R. DAY, P.C.

/s/ Dwayne R. Day

Dwayne R. Day

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and a copy of the foregoing instrument has been sent to all interested counsel of record in accordance with the Federal Rules of Civil Procedure on October 25, 2024.

**PROPOSED INSTRUCTION NUMBER 1**<sup>1</sup>

Plaintiffs claim that Defendant Gerald Goines violated Plaintiffs constitutional protection from unreasonable arrest or other “seizure”.

To recover damages for this these alleged constitutional violations, Plaintiffs must prove by a preponderance of the evidence that:

- 1) Defendant Gerald Goines committed an act that violated the constitutional rights Plaintiffs claim were violated; and
- 2) Defendant Gerald Goines’ acts were the cause of Plaintiffs’ damages.

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<sup>1</sup> [Pattern Jury Instruction, Civil Cases, U.S. Fifth Circuit, District Judges Association, No. 10.1 (2020)] [Modified]

PROPOSED INSTRUCTION NO. 2<sup>2</sup>

A plaintiff seeking to recover on a wrongful death claim under § 1983 must prove both the alleged constitutional deprivation required by § 1983 and the causal link between the defendant's unconstitutional acts or omissions and the death of the victim

A plaintiff seeking to recover under Texas's wrongful death statute must demonstrate that the defendant's wrongful actions more likely than not caused the decedent's death—not just that they reduced the decedent's chance of survival by some lesser degree.

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<sup>2</sup> *Slade v. City of Marshall, Tex.*, 814 F.3d 263, 263–65 (5th Cir. 2016)